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The Origin and Evolution of the Attorney and Solicitor in the Legal Profession of Nova Scotia

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D.G. Bell has observed that the torrent "of historical writing on Canadian legal education has yet to be matched by intensive study of the legal profession itself."¹ The aim of the present paper is to demonstrate that, for eighteenth- and early nineteenth-century Nova Scotia, the development of the legal profession was so closely linked to the evolution of the superior courts, especially the Court of Chancery, that the former cannot be studied in isolation from the latter. By the time Halifax was founded in 1749, the attorney at law and solicitor in equity had not only been statutorily entrenched as the "ministerial" part of the English legal profession, but had also been successfully translated to the colonial legal profession. The union of the two offices in one functionary or general practitioner, moreover, was no less characteristic of the colonial bar than it was of contemporary English "gentlemen of the law."²

The earliest known Chancery solicitor in Nova Scotia was one Daniel Wood (ca. 1727-1791), who has the distinction of being the only self-styled "attorney" among the founders of Halifax. His description as such

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1. D.G. Bell, "The Transformation of the New Brunswick Bar, 1785-1830: From Family Connection to Peer Control," in *Papers Presented at the 1987 Canadian Law in History Conference*, vol. 1 (Ottawa, 1987), at 240.

2. The literature on the history of solicitors, for obvious reasons, deals almost exclusively with England rather than the colonies: E.B.V. Christian, *A Short History of Solicitors* (London, 1896 [repr. 1983]); W. Holdsworth, *A History of English Law*, VI (1937 [repr. 1977]) at 448ff., XII (1938) at 51ff.; R. Robson, *The Attorney in Eighteenth-Century England* (Cambridge, 1959), *passim*; M. Birks, *Gentlemen of the Law* (London, 1960), *passim*; H. Kirk, *Portrait of a Profession: A History of the Solicitor's Profession, 1100 to the Present Day* (London, 1976), ch. 1 and 2, *passim*; D. Podmore, *Solicitors and the Wider Community* (London, 1980), at [1]ff.; *Halsbury's Laws of England*, 4th ed., vol. 44 (1983), at 5-7; P. Reeves, *Are Two Legal Professions Necessary?* (London, 1986), at 3-7. Literature on the early history of the legal profession in Nova Scotia is non-existent, apart from B. Murdoch, *Epitome of the Laws of Nova-Scotia*, (Halifax, 1832-33), III at 115, and especially I at 6ff. For the latter half of the nineteenth century, see now P. Girard, "The Roots of a Professional Renaissance: Lawyers in Nova Scotia, 1850-1910," in (1991), Man. L. J. [forthcoming]. In general see S. Botein, "The Legal Profession in Colonial North America," in W. Prest, ed., *Lawyers in Early Modern Europe and America* (New York, 1981), at 129.

on the list of emigrants implies that he had already served an articulated clerkship and been admitted an attorney of one of the superior courts of common law at Westminster Hall, though no record of his clerkship or admission has been found. During the first decade or so of Halifax rule, Wood and a handful of other attorneys of the General (subsequently, Supreme) Court also practised in the Court of Chancery as *de facto* solicitors. Of course, none of them had been regularly admitted as such either in England or in Nova Scotia, and none specialized in equity litigation or practised exclusively in the Court of Chancery. They were simply attorneys carrying different briefs, and they routinely appeared in whatever court the suit for which they had been engaged was set down for hearing. In 1751, when the first recorded Chancery action was tried,³ the legal profession in Nova Scotia was still in its infancy. It had been brought into existence simultaneously with the General and County Courts in December 1749.⁴ The Virginian statute establishing and regulating the practice of the General Court, which was both the central criminal court and the court of civil appeal, provided for the appointment and swearing in of two or more attorneys "for the more regular Prosecution of causes."⁵ From the very birth of the judicial system, therefore, the attorney was recognized as an officer of the supreme judicial court. Nova Scotia's first lawyer was Archibald Hinshelwood, one of the "Governor's Clerks," who took the prescribed attorney's oath of fealty and integrity in December 1749 and was duly admitted to practise.⁶ He was followed in February 1750 by New Englander Otis

3. *Bernett v. Jones*: RG 36 "A" Vol. 1, file 1, Public Archives of Nova Scotia [PANS]. An abstract of the case is in C.J. Townshend, *History of the Court of Chancery in Nova Scotia* (Toronto, 1900), at 68. The cause is historically important, because it is both the earliest known example of equity litigation in Nova Scotia, and the earliest evidence of the viability of an equity court as a tribunal distinguishable from the trial and appeal courts of common law. Though the complainant was seeking "relief from a contract of purchase": in effect to reverse a judgment given against him in the County Court, from which an appeal lay not to Chancery but to the General Court, he nevertheless decided to apply to the Chancellor for an equitable remedy — what modern equity would call rescission on the grounds of a mistake. He was able to do so because contract was regarded as integral to the subject matter of equity jurisprudence then prevailing in England and its American colonies. On equity in general, see D. Lieberman, *The province of legislation determined. Legal theory in eighteenth-century Britain* (Cambridge, 1989) at 71ff. On the history of the Court of Chancery, see Townshend, *op. cit.*, and B. Cahill, "Bleak House Revisited: The Records and Papers of the Court of Chancery of Nova Scotia, 1751-1855," in (1989-90), 29 *Archivaria* at 149ff.

4. The Council committee "appointed to examine The Laws of The Colonies & their Regulations with regard to the General Court & the Inferior or County Courts" reported 1749 Dec. 13: RG 1, Vol. 186 at 31, PANS.

5. RG 1, Vol. 186 at 36, PANS. See in General A.G. Roeber, *Faithful Magistrates and Republican Lawyers: Creators of Virginia Legal Culture, 1680-1810* (Chapel Hill, North Carolina, 1981).

6. Hinshelwood (ca. 1720-1773) had been chief clerk in the Secretary's office since the founding of Halifax, and in 1756 was to become Deputy Secretary of the province.

Little, the first King's Attorney [Attorney-General], who had practised law in Massachusetts, and in August by Daniel Wood.⁷ Given the primitive conditions of settlement, and the infantile state of the bar, it is not surprising that among the first attorneys were three out of the four Governor's clerks — Edward Cornwallis's private secretarial staff. A characteristic feature of the legal profession in earliest Halifax was the combination of advocacy with judicial clerkship, either in the same court or in different courts. Much if not most of the attorney's business, moreover, was notarial or solicitorial in nature.

Prominent among the early Chancery solicitors were William Nesbitt and George Suckling, who were law partners for a time and also clerks of the General Court. Nesbitt, who replaced Little as Attorney-General and Advocate-General in 1753, had also come to Nova Scotia as one of the Governor's clerks, while Suckling was an attorney of the English Court of Common Pleas. Suckling went on to become first Attorney-General of the royal province of Quebec, where he was instrumental in establishing a Court of Chancery modelled on that of Nova Scotia.⁸ Even at so comparatively early a stage in the history of the latter, Suckling distinguished between the counsel and the solicitor of complainant and defendant, respectively. He nevertheless did not recognize them as "proper Officers" of the court, a status held only by the Masters, the Examiner and the Register, without whose attendance no Court of Chancery could transact any business.⁹

Governor and Council of Nova Scotia collaborated as a Court of Chancery adjudicating equitable matters until 1764. Shortly before taking office as governor in May of that year, Lieutenant-Governor Montagu Wilmot, a professional soldier who had served on the Council from 1755 to 1759, decided to make the local institution conform more closely to the structure of the High Court of Chancery in England.¹⁰ This

7. RG 37 [HX], Vol. A² at 7; RG 39 "J" Vol. 140 at 1, PANS. From 1749 to 1752 there were ten admissions of attorneys to the nascent bar of Nova Scotia.

8. Proceedings in the reformed Court of Chancery of Nova Scotia were minutely described by Attorney-General Suckling of Quebec in a report prepared for the Council of that province in the autumn of 1764: W. R. Riddell, "The First Court of Chancery in Canada," in (1922), 2 Boston University L.R. at 234ff. Riddell erred in describing Suckling as "an English Barrister of no great standing" (at 235).

9. *Ibid.*, at 236-37.

10. RG 1, Vol. 164 at 260; Vol. 210 at 128, PANS. Where previously the governor had been presiding judge in Chancery, he now, as Chancellor, became sole judge. Three "Masters in Chancery," who functioned as assessors and referees — judicial assistants rather than assistant judges — were appointed to advise him; these were the present and former first justices of the Inferior Court of Common Pleas of Halifax County, John Collier and Charles Morris, and the Secretary of the province, Richard Bulkeley. Though none of these men was a lawyer they all were councillors, and so would already have had some experience of Chancery adjudication. (By coincidence, Governor Wilmot and Judge Morris had both been summoned to the

rationalization of practice and procedure naturally meant that the Act of 1729 *for the Better Regulation of Attorneys & Solicitors*, which had been made perpetual in 1757, was thenceforth deemed to be in force in Nova Scotia.¹¹ The Act provided not only that a sworn attorney might be admitted a solicitor, but also that no one should be allowed to act as a solicitor unless he had been admitted and enrolled in the court of equity where he intended to practise. Extending the Act to Nova Scotia resulted in the institution of a solicitors' roll drawn from the attorneys of the Supreme Court. When the reform took place, the Halifax bar consisted of no more than five lawyers, most if not all of whom had practised as solicitors in Chancery before 1764.¹²

As the Court of Chancery of Nova Scotia had now to emulate the example of the High Court of Chancery in England, a threefold procedure was adopted whereby the intending practitioner was sworn, admitted and enrolled. The lawyer having first applied to the Chancellor for admission as a counsellor and solicitor (which likely depended on his status and precedence in the Supreme Court), his admission was then recorded by the registrar. The first three solicitors admitted to practise in the reformed Court of Chancery were Richard Gibbons (1765), Daniel Wood (1766) and James Monk Jr. (1769).¹³ Of these, Gibbons had been admitted an attorney of the Supreme Court in 1755, Wood in 1750 and Monk in 1768. Gibbons and Monk's admission first as counsellor and then as solicitor each took place the same day, but they were recorded separately.¹⁴ Usage of the term "counsellor" to denote "barrister" was obsolete in England by the eighteenth century but had survived in Ireland; its introduction into Nova Scotia lends credence to the view, put forward by Judge Townshend on the basis of an examination of

Council the same day in 1755.) The legal profession was represented by Attorney-General Nesbitt, who became Examiner and subsequently, in 1777, a Master, and by Archibald Hinshelwood, then dean of the bar, who was appointed "register" (registrar). Hinshelwood [*supra*, note 6], who as Deputy Registrar in Chancery since 1752 had acted as clerk of the Court, thus provided continuity with the formative period of its existence.

11. (1729) 2 Geo. 2, c. 23. The Act conformed to Murdoch's test of "validity" — how far English laws were in force in Nova Scotia — because it had been adopted into local jurisprudence by general recognition and usage directly as a result of the Chancery reform of 1764: (1832) 1 *Epitome* at 35.

12. Among the busiest of them was James Monk Sr. (1717-1768), formerly a justice of the County Court and its successor, the Inferior Court of Common Pleas, who in July 1760 was admitted an attorney of the Supreme Court preliminary to his appointment as Nova Scotia's first "King's Solicitor" [Solicitor-General]: RG 1, Vol. 164 at 113, PANS.

13. RG 36, Vol. 76^c at 5 ["Record of the Councillors and Solicitors in the Court of Chancery"], PANS.

14. MG 100, Vol. 145, file 33; RG 36, Vol. 81, file 1, PANS.

eighteenth-century Chancery rules of practice, that the Irish Chancery had a preponderant influence on local forms and nomenclature.¹⁵

About a year after succeeding to the post of Registrar in Chancery in 1773, non-lawyer James Burrow attempted to discover whether “it was not requisite before any Solicitor, or Attorney, pleaded in that Court, that he should produce his Certificate of Qualifications, & be registered therein; — Since in looking over the records in his possession, he found only two Rolls of Admission, viz. for Mr Gibbons & Mr Monk.”¹⁶ The Chancellor agreed, and the court resolved that the regulations should be duly observed in admitting attorneys to the practice of solicitors. Burrow’s intervention was prompted by the fact that James Brenton, the former solicitor-general, was acting as counsel for the complainant in a suit then pending in Chancery without ever having been formally admitted to practise as a solicitor. Brenton, who had been admitted an attorney of the Supreme Court in 1760 and thereafter had frequently practised as a solicitor in Chancery, was obliged to file his qualifications with the Registrar. This incident demonstrated the applicability in the colonial context of Blackstone’s dictum, “To practise in the Court of Chancery it is also necessary to be admitted a solicitor therein.”¹⁷

James Brenton’s arch-rival professionally was the man who had supplanted him as solicitor-general: James Monk Jr. The first Nova Scotian lawyer to keep terms at the Inns of Court, Monk is an important figure in the evolution of the Court of Chancery as an independent tribunal. In the spring of 1775, on his first appearance in the Court as solicitor-general, Monk “moved to know the Rules, & also the Councillors [sic] or Sollicitors admitted in the said Court; — that he might conform himself punctually to the directions which had been fixed.”¹⁸ In his “Observations on the Courts of Law in Nova Scotia,” composed in the autumn of 1775, moreover, Monk drew attention to the fact that neither the Chancellor nor the Masters who advised him were lawyers. Monk was the first to suggest not only that a Master of the Rolls should be appointed to deputize for the Chancellor, but also that he should be a lawyer — in fact the principal law officer of the Crown, the

15. *Supra*, note 3 at 79. Townshend’s opinion is unfortunately based on a misconstruction of the contents of the document entitled “In Chancery” (*sic*), which originated not in the Irish Chancery but in the Irish Exchequer on its equity side, during the tenure of Chief Baron Marlay, ca. 1736: RG 36, Vol. 76^e(i), PANS.

16. RG 36, Vol. 75^b at 23, PANS; *supra*, note 13.

17. 3 *Commentaries* 3, at 26.

18. RG 36, Vol. 75^b at 51, PANS.

Attorney-General, who as senior counsel was concerned for one side or the other in most causes in Chancery.¹⁹

A peculiar feature of the reformed 'Chancery bar' was that it did not supply the Masters in Chancery, for whom a practical judicial or administrative, rather than a professional legal background, was considered appropriate. Masters Collier and Morris shortly afterwards became first and second assistant judge, respectively, of the Supreme Court, while Bulkeley, the last surviving member of the original triumvirate, became Master of the Rolls through seniority in 1782.²⁰ This, however, did nothing to obviate the bad consequences of the bar consisting of lawyers while the bench did not. Not only was the Chancellor almost always "a soldier by profession and, as such, unqualified to dispense equity,"²¹ but also was the post held on a strictly *ex officio* basis by the governor, lieutenant-governor or administrator for the time being. The anomaly of the situation was relieved somewhat by the appointment of Attorney-General Nesbitt as a Master in 1777, and by that of Loyalist Foster Hutchinson, formerly a judge of the Supreme Court of Massachusetts, in 1782.²² Not until the early 1820s, however, when the volume of business handled by the court was rapidly increasing, as were real or potential conflicts of interest between the common law and equity functions of the puisne judges, did the Masters begin to be chosen exclusively from among counsel. Though a senior barrister had been appointed Master in Chancery as early as 1813 — he became "associate circuit judge" of the Supreme Court three years later²³ — the

19. B. Cahill, "James Monk's 'Observations on the Courts of Law in Nova Scotia', 1775," in (1987), 36 U.N.B. L.J. at 141. Earlier the same year, the House of Assembly had addressed the Crown asking "to be delivered from the Oppression of Practitioners in the Law, . . . for . . . it is not the desire of our good King to have his Quiet, and inoffensive Subjects in this Quarter of the Globe given up to be persecuted by a few Rapacious Men": J.B. Brebner, "Nova Scotia's Remedy for the American Revolution," in (1934), 15 Can. Hist. Rev. at 180.

20. RG 1, Vol. 164 at 302 (1764 Jun. 27); Vol. 169 at 28 (1782 Jul. 24), PANS.

21. E. Brown, "Equitable Jurisdiction and the Court of Chancery in Upper Canada," in (1983), 21 Osgoode Hall L.J. at 276.

22. RG 1, Vol. 168 at 525; Vol. 169 at 25, PANS.

23. Peleg Wiswall, whose law practice was exclusively at Annapolis and Digby, and who therefore had never been admitted a solicitor in Chancery. There is no record of Wiswall's admission to the bar; the likely *terminus ante quem* is 1793 Jul. 15, when he was commissioned a notary public: RG 1, Vol. 171 at 49; Vol. 173 at 223, PANS. It is evident from the legislation establishing the judgeship — S.N.S. (1816) 56 Geo. 3, c. 2, s. 3 — that the reason for excepting the post of Master in Chancery from the offices which the Associate Circuit Judge could not hold was that the prospective tenant already held it. Wiswall's contemporary, Edward Brabazon Brenton, the Deputy Judge Advocate General, had nevertheless been appointed a Master "Extraordinary" in Chancery as early as 1808: RG 1, Vol. 172 at 173, PANS.

last puisne judge also to be commissioned a Master in Chancery was appointed to the bench in 1816.²⁴

On the strength of his forfeited colonial judgeship, Foster Hutchinson's appointment as Master in Chancery preceded rather than followed his admission to the bar. The most distinguished legal personage among the Loyalists who settled in Nova Scotia, Hutchinson was to acquire a principal share in directing the business of the Court of Chancery.²⁵ He and his fellow Loyalists caused the bar of Nova Scotia, which had rarely consisted of more than half-a-dozen attorneys at a time, to triple in size over the five-year period from 1782 to 1787. The majority of these lawyers came not only from Massachusetts, but also from the middle Atlantic colonies such as New Jersey and New York, where a Court of Chancery had existed for many years as a controversial instrument of executive power,²⁶ and most of them sought to practise in the Court of Chancery of Nova Scotia. The supply of lawyers, however, greatly exceeded the demand for legal services, not only in Halifax and along the Supreme Court circuit but also in boom towns such as Shelburne, which in the mid-1780s could boast as many as six resident practitioners.²⁷

A cumulative, positive effect of the Loyalist migration was an increase not only in the number, but also in the stature and ability of both

24. I.e., Lewis Morris Wilkins Sr., who was also a Chancery solicitor; see *infra*. The situation in the Loyalist province of New Brunswick, where the Court of Chancery had come into existence in 1785 simultaneously with the Supreme Court and the bar, was quite different. The Masters in Chancery were lawyers; the puisne judges were not involved in any aspect of Chancery adjudication: Equity Court minutes, 1785-1815: RS 55A, item no. 3, Provincial Archives of New Brunswick. The first appointed Master in Chancery was also New Brunswick's first lawyer: Samuel Denny Street, an attorney of the English Court of Common Pleas. The New Brunswick experience differs from the Nova Scotian in that the separate degrees of attorney and barrister were recognized almost from the beginning, and statutory regulation of the legal profession came much later. The necessary starting-point for any discussion of the early history of the New Brunswick bar is Bell's article *supra*, note 1. The paradigm which Bell proposes for New Brunswick, however, would have to be modified to suit the Nova Scotian context: "The Transformation of the Nova Scotia Bar, 1749-1836: From Judicial Regulation to Statutory Control."

25. Memorandum of Strange, CJ to Secretary of State, 1792 Mar.: CO 217/63/355 r, PRO (mfm. at PANS).

26. See S.N. Katz, "The Politics of Law in Colonial America: Controversies over Chancery Courts and Equity Law in the Eighteenth Century," in D. Fleming and B. Bailyn, eds., *Law in American History* (Toronto, 1971) at 257. Indicative of the ultramontane view of the Court of Chancery taken by émigré Loyalist lawyers is the fact that in 1788 a memorial was presented to Lieutenant-Governor Parr asking him, as Chancellor, to issue the prerogative writ of mandamus to compel the Supreme Court to restore Jonathan Sterns and William Taylor "to their privileges as Barristers [sic] in the Supreme Court": *The Halifax Journal*, 1788 Apr. 17. Sterns and Taylor, formerly of the bar of Massachusetts and New Jersey respectively, were the first lawyers in Nova Scotia to be disbarred.

27. All of these attorneys practised in the Inferior Court of Common Pleas: RG 37 [SH], Vol.

common law and equity lawyers. The new Loyalist attorney-general, Sampson Salter Blowers, wrote one of his Halifax compatriots in 1784, "stands like an apple tree among Shrubs in our Supreme Court" — surely the only time in the history of the profession that a lawyer has been compared to the lover in the Song of Songs!²⁸ Writing of the early 1790s, moreover, a later Registrar of the Court of Chancery remarked, "the Counsel employed in conducting the Causes of Suitors were held in higher estimation for professional knowledge and accurate practice than during any previous period of the History of the proceedings of this Court."²⁹

In 1802, the Act regulating and establishing fees in the Court of Chancery confirmed that the counsel and solicitors were well established in the hierarchy of officers — they appear after the Chancellor but before the Masters — and that there was a clear division of labour between them: the former were responsible for pleading, the latter for drafting.³⁰ As senior counsel and solicitor, respectively, the attorney-general and solicitor-general took precedence over the other practitioners, as they did in the Supreme Court and Court of Vice-Admiralty. Despite the rising professional reputation of the Chancery solicitors, however, by the early 1800s it was unexceptional for an attorney of the Supreme Court not to seek admission as a solicitor until he agreed to accept a complainant's brief. A striking contemporary example of this phenomenon was Lewis Morris Wilkins, who did not become a solicitor until eighteen years after his admission to the bar. In Wilkins's time the intending solicitor presented his qualifications, was ordered admitted by the Chancellor and then took the "usual oaths" before the Masters in Chancery, who were the puisne judges of the Supreme Court.³¹ The last of these three oaths, the practitioner's oath, was the same as that taken by attorneys except for the substitution of the word "solicitor"; the text was lifted verbatim from the English Act of 1729. As solicitors' admission records for 1770 through 1835 are not extant, it would be difficult to determine the ratio of attorneys to solicitors. Only by examining the Chancery cause files in

16, PANS; cf. M. Robertson, *King's Bounty. A History of Early Shelburne, Nova Scotia* (Halifax, 1983) at 209. Robertson does not make the mistake of referring to pre-1811 Nova Scotian lawyers as "barristers": *infra*, note 63.

28. G. Townsend to W. Chipman, 1784 Aug. 13: MG 1, Vol. 164C, doc. 1, PANS. The allusion is to Cant. 2:3.

29. "Register's Report relative to the Practice of granting Injunctions" (1823 Dec. 9): RG 36, Vol. 82, PANS. The author was lawyer Henry Hezekiah Cogswell, Registrar in Chancery from 1818 to 1831.

30. S.N.S. (1802) 42 Geo. 3, c. 4; repealed and replaced by (1820-21) 1 & 2 Geo. 4, c. 40.

31. RG 36, Vol. 76^b (ab init.), PANS.

numerical order could one gather the names of most if not all of the solicitors, and use the date of their first appearance in court as the *terminus ante quem* of their admission to practise.

The obvious assumption of the *Attorneys Act* of 1811,³² the first piece of legislation to deal comprehensively with regulating entry to the legal profession, was that the same lawyers either practised or intended to practise simultaneously in all three of the principal superior courts — in the Supreme Court as attorneys, in the Court of Chancery as solicitors and in the Court of Vice-Admiralty as proctors. The Act stipulated not only that admission as an attorney in the Supreme Court had to precede admission as a solicitor or proctor, but also that no practitioner could apply to become a counsellor, barrister or advocate until he had completed at least one year as an attorney.³³ (The exceptions were English and Irish barristers and graduates of King's College, Windsor.)³⁴ The *Attorneys Act* was a radical measure, which altered the basic composition of the profession by dividing lawyers into senior and junior grades. The attorneys then practising became 'barristers', and students-at-law who had successfully completed their articles of clerkship became attorneys. Writing later in 1811, Chief Justice Blowers described the *status quo ante* in this way: "there was no such grade as Barrister at Law, except by courtesy, in the Province; the Causes being conducted thro' every stage of their progress, by the sworn Attornies of the [Supreme] Court, who take precedence agreeably to the priority of admission."³⁵

32. S.N.S. (1811) 51 Geo. 3, c. 3.

33. *Attorneys Act*, s. 16.

34. *Attorneys Act*, s. 16 (proviso). That this exception was deemed to apply to universities outside of British North America is proved conclusively by the example of Nathaniel Whitworth White, A.M. (Harvard), who was admitted attorney and called to the bar simultaneously in 1818. White, 1797-1860, a Chancery solicitor who later became registrar of the Court, was the first native Nova Scotian lawyer both to have matriculated at Harvard, and to have taken his degree at a university outside of Nova Scotia.

35. Blowers to Sherbrooke, 1811 Nov. 2: CO 217/88/121^r, PRO (mf. at PANS). The occasion of the chief justice's letter to the lieutenant-governor was the unseemly Tucker affair. In 1807 John Harvey Tucker, B.A. (Yale), a barrister of the Middle Temple, had been admitted an attorney of the Supreme Court of Nova Scotia. He failed in his quest to secure admission as a barrister, however, or, in lieu of that, "precedence and preaudience" of all the other attorneys including Attorney-General Uniacke, who was both dean and ex officio head of the bar. In 1811 Tucker petitioned the Secretary of State for redress, causing a storm of protest among Nova Scotia's legal establishment. Problems of chronology aside, it is difficult not to read the over precisely and narrowly drafted section vii of the *Attorneys Act* as the response of lawyers in the Assembly to Tucker's lèse-majesté. Tucker indeed could have made an application under section xvi, which provided for the immediate, consecutive admission as attorney and barrister of anyone called to the bar in England or Ireland. His university degree would not have helped, because the Act did not recognize any institution of higher learning other than King's College, Windsor (contrariwise, the example of N.W. White: *supra*, note 34).

The courtesy in question had existed at least since 1799, when barristers as well as attorneys of the superior courts of common law in Great Britain, Ireland and the British colonies overseas were ordered to be admitted attorneys of the Supreme Court of Nova Scotia *pro forma*.³⁶ The Act of 1811 was a watershed because it intruded on what had hitherto been the prerogative of the Supreme Court, namely regulating entry to the legal profession. The length of the apprenticeship, which since 1749 had varied from three to seven years and since the 1799 *regula generalis* had been fixed at four, was increased to five, where it remained until 1872.³⁷

The effect of the *Attorneys Act* on the Chancery bar was to entrench the functional distinction between counsel and solicitor, which had previously been honoured more in the breach than the observance. The status of the counsellor, however, was ambiguous because he had no exact counterpart at the Supreme Court bar. "Barrister" was, before 1811, a mere courtesy title bestowed on attorneys from the United Kingdom or elsewhere in the British colonies who sought admission to practise in Nova Scotia. Not even English or Irish barristers could expect any precedence beyond what was conferred by the date of their local admission as attorney. The effect of the *Attorneys Act* on the Supreme Court, where the primary admission always took place, however, was not only to grant real existence and priority to the barrister, but also to distinguish him from the attorney, who had hitherto performed all his functions, but who from now on would be inferior both in status and in precedence. Henceforth the barristers and attorneys were to be different persons, or rather the same practitioner at different stages of entry into the

Tucker's precedence in any case would have been unaffected. Tucker, a native of Bermuda and latterly the colony's most distinguished lawyer, had practised as a barrister in Jamaica, one of only two British American colonies in which the offices of counsel and attorney were distinct: C0 217/88/119-125, 187-192, PRO (mfm. at PANS); A. Stokes, *A View of the Constitution of the British Colonies in North-America and the West Indies* (London, 1783), at 269-70. A similar situation could have developed as early as 1784-85, when William Wylly of Gray's Inn, an American Loyalist member of the English bar, was admitted an attorney of the Supreme Court of Nova Scotia and then New Brunswick, where he practised briefly before moving to the Bahamas.

36. RG 39 "J" Vol. 141 at 23 [1799 Oct. 21], PANS.

37. S.N.S. (1872) 35 Vic., c. 19, s. 1. This innovative 'one-year rule' separating attorney and barrister disappeared in 1864, when the university graduate qualification was removed and admission as barrister and attorney occurred for all practical purposes concurrently: (1864) 3 R.S.N.S., c. 130, s. 10. The attorneys' roll, however, was not closed until 1876. Writing about 1879, the nonagenarian John George Marshall, formerly a solicitor and Master in Chancery, and a chief justice of the Common Pleas, observed that "the present [*sic*] rule of a prescribed time between the admission as Attorney and as Barrister, is certainly the better arrangement": J.G. Marshall, *A Brief History of Public Proceedings and Events* . . . (Halifax, [1879]), at 6. The five-year articulated clerkship had originally been made compulsory by the English *Attorneys and Solicitors Act* of 1729.

legal profession. According to J.H. Baker, the distinction between the two “represents the difference between the intellectual or scientific function and the mechanical or ministerial function.”³⁸ While it is doubtful whether the rationale underlying the *Attorneys Act* was quite so sophisticated, it is worth remarking that the Act was originally drafted by a future Master of the Rolls in Chancery, and that during its difficult, three-year gestation had been the subject of intense controversy in a legislature dominated by lawyers. Taken in context, the *Attorneys Act* was of a piece with the *Supreme Court Circuit Act*, passed at the previous session, which provided that judges of the Supreme Court should be attorneys of at least ten years’ standing.³⁹ Together these Acts represent a sustained attempt to professionalize both the bench and the bar by, in effect, restricting entry to an already oversupplied legal profession.

The septennial *Attorneys Act* was amended and continued in 1818,⁴⁰ and amended again in 1824,⁴¹ but expired the following year because the legislature could not agree on a replacement. The Supreme Court had no alternative but to fill the breach with a *regula generalis* which confirmed the period of articulated clerkship at five years.⁴² 1825 and 1826 saw three important developments affecting the Court of Chancery and the bar, either directly or indirectly. In March 1825 the Society of Nova Scotia Barristers was founded, its purpose being not to control the admission of articling students to the attorneyship or attorneys to the bar — that remained a statutory monopoly of the Supreme Court — but to superintend the reception of students into articles; in other words, legal apprenticeship rather than professional entry.⁴³ December 1825 brought the second, effective creation of the office of Master of the Rolls in Chancery, and in January 1826 a new, cumulative oath roll for barristers was opened.⁴⁴ The new Master of the Rolls was the first presiding judge

38. “Counsellors and Barristers,” in J.H. Baker, *The Legal Profession and the Common Law, Historical Essays* (London, 1986) at 100.

39. S.N.S. (1809) 50 Geo. 3, c. 15, s. 7.

40. S.N.S. (1818) 58 Geo. 3, c. 19.

41. S.N.S. (1824) 4 & 5 Geo. 4, c. 5.

42. Murdoch, 3 *Epitome* at 116; T.C. Haliburton, *An Historical and Statistical Account of Nova-Scotia* (Halifax, 1829) [repr. 1973], II at 332.

43. *Rules of the Society of Nova Scotia Barristers* (Halifax, 1825); Haliburton described the Society as an institution for regulating the discipline and conduct of the bar: *supra*, note 42, at 333.

44. “It is ordered by the Court that the Deputy Prothonotary do transcribe and enter upon this Roll the names of all the Barristers of the Supreme Court now living and whose names are upon the former Rolls of the Court with the dates of their being called to the Bar. By the Court the twenty fourth day of January one thousand Eight hundred and twenty six.” It seems likely that the *regula generalis* of the Supreme Court regulating admission of attorneys, etc. to the bar was promulgated at the same time. (N.B. A transcription of the barristers’ and attorneys’ rolls is in RG 39 “M” Vol. 24^a, PANS.)

in the history of the court to be drawn directly from the bar. Simon Bradstreet Robie was neither a bureaucrat like his predecessors nor a Master in Chancery like the puisne judges, but a lawyer of long standing who had been both an ordinary solicitor and solicitor-general for ten years — not to mention the principal draftsman of the *Attorneys Act*. Robie's appointment marked the end of the long tradition of appointing common law judges as Masters in Chancery. Now that he had a lawyer as his deputy, it was no longer necessary for the Chancellor to engage the puisne judges of the Supreme Court to advise and assist him with adjudication.⁴⁵

Although the appointment of an experienced professional man as Master of the Rolls obviated the need for common law judges any longer to act as Masters in Chancery, those judges holding commissions as Masters apparently continued to exercise them as late as 1848, when the last of them died. None of the six puisnes appointed to the bench between the re-creation of the office of Master of the Rolls in 1825 and the abolition of the Court in 1855 was commissioned a Master in Chancery — ironically, in view of the fact that at least two of them had practised as solicitors. The decisive moment came in 1833, when a replacement had to be found for Judge Brenton Halliburton, the senior Master, who was appointed chief justice. The issue was whether a solicitor would be promoted to fill the vacancy or whether the appointment would devolve on Halliburton's successor as puisne judge, William Hill, who, unlike Halliburton, had practised extensively as a solicitor before his elevation to the bench. The choice fell on James Walton Nutting, the senior counsel, who conveniently was also Deputy and Acting Prothonotary and Clerk of the Crown in the Supreme Court.⁴⁶ This final separation of the Court of Chancery from the bureaucracy on one hand and the common law bench on the other completed the triumph of the solicitors. Paradoxically, it also coincided with the beginning of the twenty-year-long, ultimately successful, political struggle to have the Court of Chancery abolished.⁴⁷

45. It is remarkable, however, that as late as 1835 the lieutenant-governor *qua* Chancellor was calling on the chief justice to preside in his absence in the Court of Chancery: Campbell to Halliburton, 1835 Dec. 30: RG 36, Vol. 82, PANS. One can only assume that Fairbanks, MR must have been absent or indisposed. A comparable situation arose in *Uniacke v. Dickson*, (1848), 2 N.S.R. at 287, where the Chancellor presided, assisted by the Chief Justice and a puisne judge of the Supreme Court, only because Stewart, MR had "been engaged in the cause, when at the bar, for the complainant."

46. RG 36, Vol. 76^c at 150, PANS.

47. The opening shot had been fired from behind the lines as early as 1829 by Thomas Chandler Haliburton, a barrister and Chancery solicitor, who proposed that the Court of Chancery be abolished and its jurisdiction exercised by the judges of the Supreme Court: *supra*, note 42 at 329.

When the new oath roll for barristers was opened in January 1826, the Supreme Court bar consisted of sixty-six practising lawyers. Twenty-one of these resided in Halifax, where the Court of Chancery held its sessions. Of these at least fourteen are known to have been solicitors, while one was the non-practising Registrar of the Court. The Chancery bar, moreover, also included all three future Masters of the Rolls: Charles Rufus Fairbanks (1834), Archibald's successor as solicitor-general; S.G.W. Archibald (1841), Robie's successor as solicitor-general and Uniacke's as attorney-general; and Alexander Stewart (1846), the first barrister and solicitor to go directly from bar to bench in Nova Scotia without having held either of the Crown law offices. It needs to be said, however, that Stewart was only offered the job after the attorney-general and the solicitor-general had both declined it.⁴⁸ Such was the recognized path to judicial preferment in the pre-Responsible Government era.

According to the almanacs, from 1824 until 1840 the counsellors and solicitors of the Court of Chancery corresponded to the attorney, or more frequently, the barristers and attorneys of the Supreme Court. In 1841 the "counsellor" was displaced by the "advocate," a term normally associated with the Court of Vice-Admiralty, although its wider connotation reflects the distinction between adviser and pleader in the superior courts of civil jurisdiction. The advocates were described as barristers of the Supreme Court resident in Halifax, while the solicitors were described as attorneys of the Supreme Court admitted in Chancery.⁴⁹ By 1853 at the latest, however, towards the end of the court's existence, both advocates and attorneys had disappeared from the equation, leaving only barristers and solicitors. The information given in the almanacs is confirmed by Beamish Murdoch, whose critical attitude towards the Court of Chancery did not deter him from accepting appointment as a Master in 1840. Writing in Volume IV of the *Epitome of the Laws of Nova-Scotia*, published in 1833, Murdoch states simply that the counsel and solicitors of the Court of Chancery correspond to the barristers and attorneys of the common law courts.⁵⁰

48. Falkland to Gladstone, 1846 Apr. 2: CO 217/192/130 v. PRO (mfms. at PANS). Stewart's predecessor, Archibald, had been one of the two King's Counsel originally appointed (in 1817); the other was William Hersey Otis Haliburton. Robie, however, who was many years Archibald's senior at the bar, had been passed over for shamefacedly political reasons.

49. Belcher's *Farmer's Almanack* (1841), at 88.

50. 4 *Epitome* at 46. The example of Upper Canada is instructive in this regard. The statute of 1837 which established the Court of Chancery also enacted that all barristers and attorneys admitted to practise in the common law courts should be allowed to practise in the Court of Chancery as counsel or solicitor, respectively: (1837) 7 Wm. 4, c. 2, s. 12. In Ontario as elsewhere in the common law provinces there is a tradition of a unified bar, except for the

Though the new, omnibus *Barristers Act* of 1836 maintained the distinction between barristers and attorneys which had been introduced by the *Attorneys Act* of 1811, the effect of one of its provisions was to eliminate the distinction between lawyers practising as barristers in the Supreme Court and in an analogous capacity elsewhere.⁵¹ Henceforth, barristers were automatically deemed as such to be counsel and solicitors of the Court of Chancery, "without any other or particular admission."⁵² The status of attorneys of the Supreme Court in the other provincial superior courts remained ambiguous. As far as barristers were concerned, however, admission to practise in the Court of Chancery now involved nothing more than a summary petition to the Chancellor or Master of the Rolls enclosing the prothonotary's certificate of their admission to the bar. The decennial Act of 1836 was renewed in 1846 but allowed to expire in 1856,⁵³ after which there was no comprehensive legislation regulating the legal profession for over forty years.

The statutory abolition of the Court of Chancery in 1855 did away with all its officers including the solicitors, who reverted to whatever status they held in the Supreme Court, to which equity jurisdiction had been transferred.⁵⁴ All the functions of the solicitor were taken over by the barristers of the Supreme Court. Not even the resurrection of the Master of the Rolls in the person of the "Judge in Equity" in 1864 enabled the solicitor to resume his former role.⁵⁵ The solicitor was an extinct species for nearly thirty years, until the Nova Scotia *Judicature Act* (1884) completed the lengthy process begun by the *Chancery Court Abolition Act* and provided rational, "commonsense" rules for the concurrent administration of law and equity in the Supreme Court.⁵⁶ The *Judicature Act* restored the solicitor to his former place in the legal profession, not as an equity pleader and draftsman but as a general practitioner. Even though the combination 'barrister and attorney'

period between 1822, when the Law Society of Upper Canada was incorporated and attorneys excluded from membership, and 1857, when membership of the Law Society was made compulsory for both barristers and attorneys: W.R. Riddell, *The Legal Profession in Upper Canada in its Early Periods* (Toronto, 1916), at 14ff.; *The Bar of the Province of Upper Canada or Ontario* (Toronto, 1928), at 79-80. Riddell (*ibid.*, 90) makes the telling comparative point that "[w]hile the original Law Society Act of 1797 provided that one might, after being three years on the Books of the Law Society, act 'as an Attorney or Solicitor', in fact there was no one admitted to practise as a solicitor until after the Chancery Act of 1837, . . ."

51. S.N.S. (1836) 6 Wm. 4, c. 89: *An Act for the better regulation of Barristers, Advocates, Attornies, Solicitors and Proctors, practising in the Courts of this Province.*

52. *Ibid.*, s. 18.

53. S.N.S. (1846) 9 Vic., c. 42.

54. S.N.S. (1855) 18 Vic., c. 23.

55. S.N.S. (1864) 27 Vic., c. 10.

56. S.N.S. (1884) 47 Vic., c. 25. The Act was passed on 19 Apr. and came into operation on 1 Oct. 1884. The last "barrister and attorney at law" was admitted on 16 May; the first "barrister and solicitor" on 29 Nov. There were no admissions to the bar in the interim.

appears in the relevant chapter of the first five series of the *Revised Statutes* up to and including 1884, the rules and orders made pursuant to the *Judicature Act* state categorically that 'solicitors' means 'attorneys'.⁵⁷ The latter office had fallen into desuetude in the 1870s and its character had been assumed by the former; by the 1880s the term itself was obsolete and archaic. Since admission as barrister and attorney had been virtually simultaneous since 1864, there was clearly no point in maintaining separate rolls of admission; the attorneys' roll was discontinued in 1876. The fact that no solicitors' roll was instituted, moreover, indicates not only that the degree of barrister had already attained the highest level of pre-eminence and inclusiveness, but also that the 'new' solicitor was either more closely related to, or more nearly identified with the barrister than the 'old' attorney had been.

This fundamental change was reflected in the consolidatory *Barristers and Solicitors Act* (1899), according to which "Every person entitled to be admitted as a solicitor is also entitled to be admitted as a barrister."⁵⁸ This Act was not only the first entirely new and comprehensive piece of legislation since 1836, but was also the culmination of the first century of statutory regulation of the legal profession; the *Barristers and Solicitors Act* as it appears in the *Revised Statutes of Nova Scotia* (1989) descends lineally from it.⁵⁹ By 1939, when the Act of 1899 was effectively repealed, it was no longer considered necessary to explain the meaning of solicitor but instead its relation to barrister: thus, for the first time, "barrister" includes 'solicitor' — an implicit recognition that the profession, which was once divided between barristers and attorneys, between fully qualified practitioners and probationers, had been reunified. The converse, however, is not true; it would make nonsense of history to state that 'solicitor' includes 'barrister'. Admission as an attorney in the Supreme Court was always a prerequisite, stated or implied, of admission to practise in the Court of Chancery as a solicitor. Regardless of the fact that as late as 1900 the second Nova Scotia *Judicature Act* could interpret the term 'solicitor' as including 'attorney',⁶¹ and that even as late as 1930 the law list in *Belcher's Farmer's Almanac* still preferred the latter to the former,⁶² it was

57. Order 69 (Interpretation of Terms), s. 1.

58. S.N.S. (1899) 62 Vic., c. 27, s. 16.

59. Vol. 1, c. 30.

60. S.N.S. (1939) 3 Geo. 6, c. 9, s. 2(b).

61. Order 69 ("Interpretation of Terms"); cf. *Nova Scotia Judicature Act*, 1950: Order 69.

62. Until 1882 the annual law list consisted of two columns, one the date of admission as attorney; the other the date of call to the bar. After 1882 there was one column only, made up of "attornies." *Belcher's Farmer's Almanac* (Halifax) ceased publishing in 1930, after more than a century.

'barrister' that was the neologism.⁶³ Attorneys and solicitors in the legal profession of Nova Scotia antedated the barrister by some sixty years. An historically more accurate formulation, therefore, could be that (before 1811) 'attorney' includes 'barrister'. Today's solicitor, in any case, has less in common with his predecessor in the old Court of Chancery than with his modern English counterpart, who assumed the character of attorney and solicitor of the old superior courts of law and equity as a result of the passage of the *Supreme Court of Judicature Act* (1873).⁶⁴ The function of the solicitor is continuous with that of the attorney whom he displaced, and is combined with that of the barrister. Hence today's common lawyer is styled "barrister and solicitor" — except in the United States, where he continues to be styled "attorney," and the barrister is altogether unknown. It is therefore historically correct to say that in the American legal tradition, which began to diverge from the British after independence, 'attorney' includes 'counsellor'.

Given the relatively small size of the legal profession, and the absence of legislative regulation during the first sixty years of its existence, common law and equity lawyers in Nova Scotia were necessarily the same persons. From 1749 until 1811 the general practitioner was the attorney of the Supreme Court, who discharged the functions of an attorney of each of the three superior courts of common law at Westminster Hall. The bar was composed entirely of attorneys; barristers did not exist, except in the sense that the attorney also functioned as an advocate who pleaded at the bar. In 1811 the barrister *per se* was introduced, and for the next fifty years or so attorneys coexisted with barristers, who differed from them in status and precedence. Dividing the profession into barristers and attorneys — senior and junior counsel, as it were — was an experiment which failed, because it was not actualized in the practice of law. In the end, the Nova Scotia *Judicature Act* (1884) affected the legal profession most conspicuously by changing its nomenclature: 'barrister' was retained; 'attorney' was dropped; and 'solicitor' reintroduced. This was doubtless the product of indirect, perhaps unconscious, imitation of the English *Judicature Act* (1873), mediated through the Ontario *Judicature Act* (1881),⁶⁵ which

63. An example of the anachronistic misuse of the term 'barrister' is to be found in *The Legislative Assembly of Nova Scotia, 1758-1983* [1984], where it replaced the innocuous term 'lawyer', used correctly (with one exception) in *Directory of the Members of the Legislative Assembly of Nova Scotia, 1758-1958* [1958] to describe pre-1811 attorneys of the Supreme Court. A necessary qualification of this general rule, however, is that not all MHAs of the period who were lawyers by profession had been admitted attorneys in order to practise law in Nova Scotia.

64. (1873) 36 & 37 Vic., c. 66.

65. S.O. (1881) 44 Vic., c. 5.

denominated all legal practitioners other than barristers as 'solicitors of the Supreme Court'. Thus, from the passage of the *Judicature Act* onwards, the legal profession in England has consisted exclusively of the barrister and the solicitor, the former holding briefs and appearing in the Supreme Court as an advocate of causes referred to him by the solicitor, the latter consulting with and advising clients, and retaining and instructing the barrister on their behalf. The common law provinces of Canada adapted the protocol of the *Judicature Act* to their own tradition of a unified profession, the essential difference being that in British North America every lawyer was both a barrister and a solicitor, while in England every lawyer was either one or the other.

Though attorneys as junior practitioners were ineligible for admission to the Society of Nova Scotia Barristers, there never had been any question of establishing a separate organization on the model of the English "Society of Gentlemen Practisers in the Courts of Law and Equity" (predecessor of the Law Society).⁶⁶ The practice and profession of the law in Nova Scotia was, and really had always been, unitary — different courts but the same practitioners at the bar of each. Bifurcation occurred only with respect to qualifications and procedure for admission to practise. It was less a question of functional distinction and the division of labour and responsibilities, than of privileges and precedence. The nature of the distinction between attorney and barrister, moreover, changed substantively over time. Before 1811, the attorney exclusively held the character which the barrister afterwards assumed. After 1811, the attorney was not an independent legal practitioner, but an advanced student-at-law preparing for his call to the bar. Taking a utopian view of lawyers' professional maturity, the statute of 1811 conceived the attorneyship as a prospective English barrister's pupillage; as if it were merely a probationary period. The connotation of 'attorney', which would survive as an increasingly obsolescent technical term for another seventy-five years, thus changed fundamentally and for good. The mechanism of professional entry was also gradually simplified to the point where, by the mid-1860s, an attorney of the Supreme Court was entitled to be admitted as a barrister immediately after his admission as an attorney. The dual personality of the lawyer was no longer a meaningful concept, and thus could not be sustained.

66. "The Society of Gentlemen Practisers in the Courts of Law and Equity" was founded in consequence of the Act of 1729 (*supra*, note 11). It was eventually superseded by "The Incorporated Law Society," which came into existence about 1825, and may have provided the impetus for the institution of both the Law Society [Barristers' Society] of New Brunswick and the Society of Nova Scotia Barristers. The former was incorporated in 1846; the latter in 1858 — an earlier attempt, in 1844, having failed to gain passage through the legislature.

From 1884 to the present, the legal profession in Nova Scotia has consisted of barristers and solicitors, whose separate and unique functions are united in the same practitioner. There is no barrister who is not also a solicitor, and vice versa. Historically, however, while there were always attorneys who were not practising solicitors, there were no solicitors who were not also attorneys. Once statutory regulation of the legal profession had begun, admission as an attorney in the Supreme Court gradually assumed the character of a licence to practise in all the provincial superior courts. The provision in the Act of 1836, whereby barristers became *ex officio* solicitors, moreover, caused equity lawyers to lose their distinctive identity nearly twenty years before the Court of Chancery itself was abolished, and the grade of solicitor disappeared. The distinction between counsel and solicitor in the Court of Chancery thus gradually ceased altogether to be institutional and became merely pro forma, like the distinction between barrister and solicitor in the Supreme Court after the passage of the *Judicature Act*. The fact that the terms "counsel" and "solicitor" began from the 1820s onwards to be used almost interchangeably demonstrates that the same equity practitioner routinely discharged both functions.

Just as the English *Judicature Act* (1873) conferred on the solicitor of the new Supreme Court the character of attorney and solicitor of the old superior courts of law and equity, so the Nova Scotia *Judicature Act* (1884) conferred on the reborn solicitor the character of an attorney of the Supreme Court. Though one might have expected the term to be used in connection with proceedings before the Judge in Equity between 1864 and 1884, the solicitor was revived in a form quite different from that which he took during the lifetime of the Court of Chancery. Henceforth, the only difference between the two was that the solicitor was simultaneously a barrister, while the attorney was excluded from the bar. The *Judicature Act* accomplished in Nova Scotia what had been done in England in 1873-75 and Ontario in 1881. The solicitor became an officer of the reconstituted Supreme Court, exercising all the functions hitherto exercised by the attorney. English precedents aside, the revival of the solicitor may also have been a tacit admission that the creation, as it were, of a 'Chancery Division' within the Supreme Court in the character of the Judge in Equity had retarded, not facilitated, the concurrent administration of law and equity. It required the interposition of the *Judicature Act* (1884) to restore the *status quo ante* 1864, during which period equity business had quite naturally and efficiently devolved on the senior puisne judge of the Supreme Court, who was an experienced Chancery solicitor,⁶⁷ and to realize finally the objective of the *Chancery Court Abolition Act* (1855), which was to demolish a superfluous court

67. I.e., William Blowers Bliss.

— not to hamper the legitimate exercise of its jurisdiction. The “Rules of Civil Procedure” adopted pursuant to the first *Judicature Act* recognized the solicitor as being sufficiently distinct from the barrister to enable him to be defined as an attorney. It is arguable, however, that the solicitor survived death and was resurrected because the Supreme Court, *a fortiori* after the passage of the *Judicature Act*, exercised concurrently the equitable jurisdiction of the old Court of Chancery, where the solicitor had originally practised.

It is necessary to distinguish clearly between the modern solicitor and his predecessor in the eighteenth and nineteenth centuries, because their origin and function were different. The destiny of the latter was inextricably linked to that of the court in which he practised, and he was perhaps more amenable to legislative regulation than his elder and more firmly entrenched counterpart, the attorney. Though solicitors and attorneys were necessarily the same persons, moreover, they were officers of quite separate and independent courts. Though the modern meaning of ‘solicitor’ differs essentially from the eighteenth-century one, its persistence as a technical term now denoting the non-advocatory and advisory functions of the lawyer is perhaps best explained by reference to its origin in the Court of Chancery. In England, for example, the solicitor is still formally admitted by the Master of the Rolls, who today presides in the Civil Division of the Court of Appeal, but who before the passage of the *Judicature Act* presided in the High Court of Chancery. Whether or not one attributes the solicitor’s revival in Nova Scotia to the posthumous influence of the defunct Court of Chancery, the roots of the solicitor are embedded no more deeply in the history of the equitable jurisdiction than those of the attorney-cum-barrister, who became an equity lawyer by default when the court in which the solicitor practised was abolished, and its jurisdiction conferred on the Supreme Court.

Where once the attorney and the solicitor practised separately in the Supreme Court and the Court of Chancery of Nova Scotia, now the barrister and solicitor perform interchangeably the function of counsel and attorney in the Supreme Court and County Court of Nova Scotia, as well as in the Supreme Court and Federal Court of Canada. The origin and evolution of the attorney and solicitor in the legal profession of Nova Scotia up to its sesquicentenary in 1899 fully justifies the conclusion reached by the late Chief Justice Laskin in his distinguished Hamlyn Lectures: “Notwithstanding the fusion of the two branches of the profession from the very beginning of the administration of justice in what is now common law Canada . . . , practices dependent on the English separation were nonetheless recognized.”⁶⁸

68. B. Laskin, *The British Tradition in Canadian Law* (London, 1969), at 24.